

1 VIRGINIA:

2 IN THE COUNTY OF WASHINGTON

3 VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY

4 VIRGINIA GAS AND OIL BOARD

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8
9 FEBRUARY 19, 2002

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12 APPEARANCES:

13 MASON BRENT, GAS & OIL INDUSTRY REPRESENTATIVE

14 KEN MITCHELL, CITIZEN APPOINTEE

15 BENNY WAMPLER, DIRECTOR OF THE DMME & CHAIRMAN

16 MAX LEWIS, PUBLIC MEMBER

17 SANDRA RIGGS, COUNSEL FOR THE BOARD WITH THE ATTORNEY
18 GENERAL'S OFFICE

19 BOB WILSON, DIRECTOR OF THE DIVISION OF GAS & OIL AND ACTING
20 PRINCIPAL EXECUTIVE TO THE STAFF OF THE BOARD

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AGENDA AND DOCKET NUMBERS:

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EXHIBITS:

PMC EXHIBIT ONE - DEED DATED 3/2/06
PMC EXHIBIT TWO - DEED DATED 8/15/08

****AGENDA ATTACHED

1 BENNY WAMPLER: Good morning, my name is Benny
2 Wampler. I'm Deputy Director of the Department of Mines,
3 Minerals and Energy, and Chairman of the Gas & Oil Board.
4 I'll ask the Board members to introduce themselves, starting
5 with Mr. Brent.

6 MASON BRENT: My name is Mason Brent. I'm from
7 Richmond, and I represent the gas and oil industry.

8 KEN MITCHELL: My name is Ken Mitchell. I'm from
9 Stafford County, Virginia. I am a citizen appointee on the
10 committee.

11 SANDRA RIGGS: I'm Sandra Riggs with the Office of
12 the Attorney General, here to advise the Board.

13 MAX LEWIS: My name's Max Lewis. I'm from Buchanan
14 County. I'm a public member.

15 BOB WILSON: I'm Bob Wilson. I'm the Director of
16 the Division of Gas and Oil, and the principal executive to
17 the staff of the Board.

18 BENNY WAMPLER: The first item on the agenda today,
19 we have a request to continue. That's docket number VGOB-01-
20 12/18-0994. It was continued from January. It's order
21 identified as ZZZ-29. So, if there's no objection, we'll
22 continue that.

23 (No audible response.)

24

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1 BENNY WAMPLER: Hearing none, that is continued.
2 The next item on the agenda is a petition from Pocahontas Gas
3 Partnership for pooling of a coalbed methane unit under the
4 Oakwood Coalbed Methane Gas Field I Order, identified as G-
5 48. This is docket number VGOB-02-02/19-1002. We'd ask the
6 parties that wish to address the Board in this matter to come
7 forward at this time.

8 MARK SWARTZ: Mark Swartz and Les Arrington.

9 BENNY WAMPLER: The record will show there are no
10 others.

11 MARK SWARTZ: Mr. Chairman, the issue this morning
12 on all three of these units is...and the people are pretty
13 much the same as well, but the issue is surface owner claims.
14 I think it would make sense to combine them, the three of
15 them. I would request you all do that so that we cover it at
16 one time. You'll notice on G-48 and 49, the people are
17 identical. In H-48, several of the people from G units are
18 also in that.

19 BENNY WAMPLER: Do you know whether or not the
20 parties that are here today are all in all three?

21 MARK SWARTZ: I don't know.

22 (Mr. Arrington confers with some people in the
23 audience.)

24

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1 LESLIE K. ARRINGTON: Those folks back over there
2 are in all three.

3 BENNY WAMPLER: Any objection to combining?

4 (No audible response.)

5 BENNY WAMPLER: First, if you can't...if you're
6 having difficulty hearing, why don't you move down at least
7 another row. If you want to address the Board, you can come
8 on up here because they've asked us to combine all of these
9 units. So, we're planning to do that unless there's an
10 objection to that.

11 (No audible response.)

12 BENNY WAMPLER: I've called G-48. The next one is
13 G-49, docket number VGOB-02-02/19-1003; and H-48, docket
14 number VGOB-02-02/19-1004. Now, we'd ask the parties that
15 wish to address the Board in this matter to come forward at
16 this time. I'm calling all three dockets.

17 MARK SWARTZ: Mark Swartz and Les Arrington.

18 BENNY WAMPLER: Do any of you want to address the
19 Board regarding any of these? Now, they will go ahead and
20 present the matter before the Board. You'll have an
21 opportunity to ask questions. We'll have an opportunity to
22 listen to you and ask you questions as well and try to help
23 you sort through whatever concerns you may have. If you want
24

--

1 to do that, you need to come down here and sit and state your
2 name for the record, please.

3 (Fred Mullins comes to the table).

4 BENNY WAMPLER: If you'd just tell us your name,
5 please.

6 FRED MULLINS: My name is Fred Mullins.

7 BENNY WAMPLER: Fred Mullins.

8 FRED MULLINS: Or Louie Fred. I've got more than
9 one.

10 BENNY WAMPLER: Okay.

11 FRED MULLINS: What I want to find out---?

12 BENNY WAMPLER: Just a minute. Let us go ahead and
13 let them present---.

14 FRED MULLINS: Okay.

15 BENNY WAMPLER: ---and then they may answer your
16 concerns. If not, we'll try to make sure they do.

17 FRED MULLINS: All right.

18 BENNY WAMPLER: Okay. Mr. Arrington, do you want
19 to be sworn?

20 (Mr. Arrington is duly sworn.)

21

22 LESLIE K. ARRINGTON

23 having been duly sworn, was examined and testified as

24

--

1 follows:

2 DIRECT EXAMINATION

3 QUESTIONS BY MR. SWARTZ:

4 Q. You need to state your name for the record.

5 A. Yes. Leslie K. Arrington.

6 Q. Who do you work for?

7 A. CNX Gas Resources...CNX Gas, L.L.C. I'm
8 sorry.

9 Q. Okay. And what do you for them?

10 A. I'm a gas engineer.

11 Q. Okay. We have combined three pooling
12 applications today, right,---?

13 A. Yes, we do.

14 Q. ---for hearing?

15 A. Yes.

16 Q. And did you either prepare the notices and
17 applications and related exhibits, or cause them to be
18 prepared under your supervision?

19 A. Yes, I have.

20 Q. Okay. And in all three of these units, do
21 we have a situation where up until not too long ago you
22 believed...meaning Pocahontas Gas Partnership, believed that
23 these were three voluntary units?

24

--

1 A. That's correct.

2 Q. Okay. And who is the principal lessor that
3 you have leased...obtained leases from in these units to
4 cause them to be voluntary?

5 A. Yes, Pocahontas Mining Company.

6 Q. Okay. In the middle of March, did you
7 receive some claims?

8 A. Yes, we did.

9 Q. Okay. And those claims were asserted by
10 some of the surface owners in these three units, correct?

11 A. That's correct.

12 Q. And they were claiming coalbed methane?

13 A. Correct.

14 Q. And, in fact, there was a letter dated March
15 the 17th, 2000, by some of them, claiming to represent others
16 as well, right?

17 A. That's correct.

18 Q. To the Virginia Gas and Oil Board with
19 regard to units G-48, G-49 and H-48, is that correct?

20 A. That's correct.

21 Q. Just for example here, on the tract
22 identifications, and let's start with G-48, okay?

23 A. Yes.

24

1 Q. If we look at the plat, I would ask you
2 whether or not the well itself in G-48 is located on surface
3 owned by any of the claimants?

4 A. I'd have to look back. No.

5 Q. What surface is it on?

6 A. Pocahontas Mining.

7 Q. Okay. And is that true for the other two
8 units as well, that the well location is actually on a
9 Pocahontas Mining surface tract?

10 A. I believe that's correct.

11 Q. Okay. Do you want to check?

12 A. We need to check.

13 Q. Okay.

14 A. It has been a long time.

15 Q. Let's look at G-49 as well.

16 A. Yes, G-49 is Pocahontas Mining.

17 Q. That well site is also on Pocahontas Mining?

18 A. Uh-huh.

19 Q. And then let's look at H-48 to see where the
20 well is located or proposed to be located?

21 A. Okay. It too is Pocahontas Mining.

22 Q. Okay.

23 A. You know, some of the access road may have
24

1 crossed some of these parties.

2 Q. I understand. But the actual well
3 location---?

4 A. That's correct.

5 Q. ---is on PMC surface tract in all three
6 situations?

7 A. That's correct.

8 Q. Continuing now to look at G-48. If we look
9 at the tract identification, have you identified on the map
10 and then also on the tract identifications, the surface
11 tracts of the claimants?

12 A. We have.

13 Q. Okay. How were those mapped?

14 A. In general, those were mapped according...
15 the actual deed descriptions in many of the cases were not
16 plattable deed descriptions. Our land agent and draftsman
17 went to the field and it was mapped in the field by
18 conversations with the owners, or evidence that they found in
19 the field.

20 Q. Okay. Who were the two people that went out
21 to do that?

22 A. It would have been our land agent Terry
23 Owens, and our draftsman Mike Fletcher.

24

--

1 Q. Okay. So basically the tracts, the
2 descriptions are unplattable, correct?

3 A. In many cases, they were.

4 Q. And so you relied on what the...what the
5 owners, the people who live there, were telling you?

6 A. We did.

7 Q. When, if ever, did you determine there was a
8 debate about where the tract boundaries were located?

9 A. Personally, I discovered that yesterday in
10 some discussions with Terry.

11 Q. Okay. And who is it your understanding may
12 have some quarrel with the location of the boundaries?

13 A. Mr. Mullins.

14 Q. Okay. Have you heard anything else from any
15 of the other claimants with regard to the way you platted
16 their surface tracts?

17 A. None.

18 Q. Okay. So, as far as you know, no one has
19 any quarrel with the boundaries except Mr. Mullins, who is
20 sitting next to me today?

21 A. That's correct.

22 Q. And if he's got something to say in that
23 regard, I'll assume we'll hear from him, right?

24

1 A. We will.

2 Q. Okay. In the tract identifications then,
3 you have listed the various surface owners and you have shown
4 them as CBM claimants, is that correct?

5 A. I did, yes.

6 Q. And then you've actually calculated if their
7 claim was valid, what their percentage would be?

8 A. We did.

9 Q. Okay.

10 A. Yes, we did.

11 Q. Then if go...again, continuing with G-48
12 because they're all the same, but just to give the Board a
13 flavor for how we've handled this, if you'll look at Exhibit
14 B-3, which is the Exhibit that we normally use to identify
15 the people we're pooling, right?

16 A. That's correct.

17 Q. Are only surface owners listed on that?

18 A. That's correct.

19 Q. And so you have leases from all of the
20 minerals owners that you've identified?

21 A. That's correct.

22 Q. And, again, their interest and acreage would
23 appear on B-3, correct?

24

1 A. That's correct.

2 Q. Now, because there is an adverse claim by
3 surface owners, the fee minerals, to the extent there are
4 surface claims, becomes subject to escrow, correct?

5 A. Yes, they it would be.

6 Q. And that would be the only reason?

7 A. Correct.

8 Q. And you have an Exhibit E attached to all
9 three of these applications indicating that there is an
10 escrow requirement?

11 A. That's correct.

12 Q. Have you offered leases to any of the
13 surface claimants?

14 A. No.

15 Q. Why not?

16 A. We feel we have a 100% of the mineral and
17 coalbed methane leased beneath this unit.

18 Q. Have you done...have you undertaken both
19 mineral titles and surface titles for all the tracts that are
20 at issue?

21 A. Yes, we have.

22 Q. And what was the law firm that did that for
23 you?

24

1 A. Altizer, Walk & White.

2 Q. And what was their advice with regard to

3 whether or not you needed to lease surface owners or surface

4 claimants here?

5 A. Those would be surface only tracts.

6 Q. Okay. So, their advice was you didn't need

7 to do that?

8 A. That's correct.

9 Q. Have you had any discussions with the

10 mineral owner, PMC?

11 A. Yes, we have.

12 Q. And what is their position?

13 A. Their position is that they own the mineral

14 in fee and we have it under lease.

15 Q. And was it, in fact, their position that

16 they did not want you to file for pooling applications here?

17 A. That's correct, they did.

18 Q. And their complaint was that this would tie

19 up funds they believe they were entitled to receive?

20 A. That's correct.

21 Q. And, in fact, they were planning on being

22 here this morning, but we don't see them yet?

23 A. And should be, yes. Told me they would.

24

1 Q. And we explained to them that the Virginia
2 Code requires pooling when you have claimant, right?

3 A. Yes, it does.

4 Q. And the provision that we have relied on
5 here in pooling these surface claimants is actually the
6 introductory paragraph to 41.1-361.22, is that correct?

7 A. That's correct.

8 Q. Which actually uses the word claimant?

9 A. It does.

10 Q. And provides that, in effect, any claimant
11 could actually file a pooling application?

12 A. That's correct.

13 Q. Okay. So, that's why we've done what we've
14 done?

15 A. Yes.

16 Q. Okay. All right, going back to the basic
17 information that we have with regard to all units and then
18 we'll kind of take them one at a time again.

19 A. Okay.

20 Q. Who is the applicant here?

21 A. Pocahontas Gas Partnership.

22 Q. And is that true in all three cases?

23 A. Yes, it is.

24

1 Q. And who are the partners in Pocahontas Gas
2 Partnership?
3 A. Consol Energy and Consolidation Coal
4 Company.
5 Q. Okay. And that's Consol Energy, Inc.,
6 correct?
7 A. Yes.
8 Q. Is it a Virginia...is Pocahontas Gas
9 Partnership a Virginia General Partnership?
10 A. Yes, it is.
11 Q. Who are you requesting be appointed by the
12 Board if these applications are approved as the designed
13 operator?
14 A. Pocahontas Gas Partnership.
15 Q. Okay. Does Pocahontas Gas Partnership have
16 a blanket bond on file and has it registered with the
17 Department of Mines, Minerals and Energy?
18 A. Yes, it is.
19 Q. Is it authorized to do business in the
20 Commonwealth?
21 A. Yes, it has.
22 Q. Have you listed in Exhibit B-3 to each of
23 these applications and in the notice, all of the folks that
24

1 you're seeking to pool?

2 A. Yes, we have.

3 Q. And in each instance, are those people only

4 surface owners?

5 A. Yes, they are.

6 Q. Who have asserted claims?

7 A. Yes.

8 Q. Have you... what have you done with regard

9 to noticing those people?

10 A. We mailed by certified mail, return receipt

11 requested in all three units on January the 18th of 2002; and

12 published in the Bluefield Daily Telegraph for G-48 on

13 January the 23rd of 2002; G-49, January the 24th of 2002; and

14 H-48, January the 25th of 2002.

15 Q. When you published, what did you publish?

16 A. The notice and exhibit...the location

17 exhibit.

18 Q. Okay. Have you filed the certificates of

19 publication from the newspaper with the Board this morning?

20 A. Yes, we have.

21 Q. And have you also filed your documentation

22 with regard to mailing?

23 A. Yes, we did.

24

1 Q. And that's true with regard to all three
2 units?

3 A. Yes, it was.

4 Q. Do you want to add anybody as a respondent
5 to any of these pooling applications this morning?

6 A. No.

7 Q. Do you want to dismiss anyone?

8 A. No.

9 Q. Now, these three units are all Oakwood I
10 units?

11 A. Yes, they are.

12 Q. So, they would contemplate frac production
13 from 80 acre units in the Oakwood Field, correct?

14 A. Yes, they would.

15 Q. And basically we're talking about producing
16 coalbed methane from the Tiller Seam on down?

17 A. Correct.

18 Q. Okay. There is one well actually permitted
19 in each unit?

20 A. It is.

21 Q. And in all three cases, that one well is in
22 the drilling window, is that correct?

23 A. Yes, it is.

24

1 Q. The target formation, I take it in all three
2 cases, is the Pocahontas Three Seam?

3 A. Yes. That was our actual target. But we
4 drilled the entire...down to the red and green shells.

5 Q. Okay. Now, I've indicated to the Board that
6 you have in all three of these units a 100% of the fee
7 minerals leased in your opinion, correct?

8 A. Yes, we do.

9 Q. So, we're just dealing about the outstanding
10 surface owners?

11 A. Correct.

12 Q. In regard to all three units, is it your
13 opinion that the plan that's disclosed by the applications
14 and the plat is a reasonable plan to develop coalbed methane
15 under these three units through the use of a frac well in
16 each unit?

17 A. Yes, it is.

18 Q. And by the pooling application that you have
19 filed, is it your opinion that you have, in fact, a process
20 in place here, or at least the ball is rolling down the hill,
21 toward a pooling order that would protect all people with
22 deeded interest or making claims to the coalbed methane in
23 these three units?

24

--

1 A. Yes, it will.

2 Q. Let's take specifically G-48. Have you
3 provided the Board with an estimate with regard to costs?

4 A. G-48?

5 Q. Yes.

6 A. Yes, I have. The estimated cost is
7 \$214,353.51, drilled to a total depth of 2,471.20 feet.

8 Q. Okay. And is that well already drilled?

9 A. Yes, it is.

10 Q. And what's the permit number?

11 A. 4651.

12 Q. And if we look at Exhibit A, page two, it
13 shows that you're not...actually probably under four, you
14 should show interest being pooled zero with regard to coal,
15 oil and gas?

16 A. Yeah, coal...yes. It should. We'll correct
17 that.

18 Q. And what are you, in fact, seeking to pool
19 in G-48?

20 A. 25.575%.

21 Q. You show a 100% above, and obviously you
22 need show a zero below it?

23 A. Yes. Yeah, that's right.

24

--

1 Q. So, if you total the surface owner claims
2 from Exhibit B-3, or the tract IDS, there's 25.57% being
3 claimed?

4 A. That's correct.

5 Q. Adverse to Pocahontas Mining?

6 A. Correct.

7 Q. Now, let's look at G-49, A, page two, and
8 we've got the same---?

9 A. Same.

10 Q. ---100% above, which should be zero below,
11 correct?

12 A. That's correct.

13 Q. And what are the surface owner claims?

14 A. Surface owner claim in G-49 is 18.8875%.

15 Q. And G-49, what is the well cost estimate
16 that you've provided?

17 A. G-49 is \$213,596.21, drilled to a total
18 depth of 2,444.50 feet; its permit number is 4509.

19 Q. And it has been drilled, I take it?

20 A. Yes, it has. It was drilled on October the
21 1st of 2001.

22 Q. Okay. With regard to H-48, what is the well
23 cost estimate in that case?

24

1 A. H-48 is \$200,372.54. It was drilled to a
2 total depth of 2,226.50 feet. It was drilled on November the
3 2nd of 2001. Its permit number is 4442.

4 Q. Okay. Going to Exhibit A, page two with
5 regard to H-48. You need to revise that again to zero coal
6 interest and zero oil and gas. And what is the...
7 collectively, what are the total percentage of claims of the
8 various claimants?

9 A. 8.4375%.

10 Q. Now, with regard to just giving you an
11 example, if you look at H-48, obviously you've got a fairly
12 long list of heirs, okay.

13 A. Yes.

14 Q. And you have not been able to break out
15 their interest, correct?

16 A. That's correct.

17 Q. So, they're being pooled collectively except
18 for Tract 2C?

19 A. Correct.

20 Q. Okay. If we look at G-48 as another
21 example, here you were, in fact, able to break out the
22 percentage interest of the various claimants and heirs?

23 A. We were.

24

--

1 Q. Okay. And you actually report something not
2 collectively, but for each person---?
3 A. We did.
4 Q. ---you were able to do that?
5 A. That's right.
6 Q. That's right. And just for example here, if
7 Mr. Mullins wanted to figure out what his claim for royalty
8 was, what would he do?
9 A. He'd use the far right hand column and his
10 percentage of interest within that unit in Tract number 2
11 would 3.175%.
12 Q. In the entire unit?
13 A. Right, in Tract 2.
14 Q. Okay. And he would take that 3.1750% times
15 12½%?
16 A. Correct.
17 Q. And that would be his royalty claim?
18 A. Correct.
19 Q. Now, if he wanted to participate in this
20 unit, in other words, write a check to the operator---?
21 A. Right.
22 Q. ---would it be true that he would take the
23 3.175% times the amount reported on Exhibit C, the \$214,000,
24

1 and that would be the amount of the check that he would have to
2 tender to participate?

3 A. That's correct.

4 Q. If he decided he wanted to be carried on his
5 claim, he would take that same percentage, the 3.175 times
6 the 214,000 times 3, right?

7 A. That's correct.

8 Q. And that would be the carried interest
9 multiplier?

10 A. Yes.

11 Q. And once the operator had recouped that,
12 then he would back into the well at the 3.175%, correct?

13 A. Correct.

14 Q. And that would be true for everybody?

15 A. That's correct.

16 Q. In terms of figuring what their royalty
17 interest might be or claim might be, what their participation
18 and so forth?

19 A. Correct.

20 Q. That's all I have.

21 BENNY WAMPLER: Mr. Arrington, you mentioned that
22 you worked for CNX Gas, L.L.C. as a gas engineer. Can you
23 tie that together for us---?

24

--

1 LESLIE K. ARRINGTON: Yes.

2 BENNY WAMPLER: ---with Pocahontas Gas Partnership?

3 LESLIE K. ARRINGTON: Consol Energy formed a gas

4 company and all of our gas operations are now being moved

5 over. All the paperwork is not in place at this point except

6 for probably our paycheck.

7 MARK SWARTZ: Which is important.

8 LESLIE K. ARRINGTON: That's correct. Yeah, it's

9 very important.

10 BENNY WAMPLER: And that gas company is CNX Gas---?

11 LESLIE K. ARRINGTON: Gas.

12 BENNY WAMPLER: ---L.L.C.?

13 LESLIE K. ARRINGTON: L.L.C.

14 BENNY WAMPLER: And as such, you're authorized to

15 manage Pocahontas Gas Partnership properties?

16 LESLIE K. ARRINGTON: Yes, we are.

17 BENNY WAMPLER: Mr. Wilson, did you have any

18 objection to any of the permits on these three wells?

19 BOB WILSON: No, sir.

20 BENNY WAMPLER: Questions from members of the Board

21 at this time?

22 (No audible response.)

23 BENNY WAMPLER: Mr. Mullins, go ahead and ask the

24

1 questions that you have now.

2 FRED MULLINS: Yeah, first off, you say you own
3 that property we're talking about on 48 there.

4 LESLIE K. ARRINGTON: If you're...you're speaking
5 to the minerals or are you speaking to surface?

6 FRED MULLINS: No, the property. I'm speaking of
7 the surface first.

8 LESLIE K. ARRINGTON: Okay.

9 BENNY WAMPLER: Are you saying G-48?

10 FRED MULLINS: Yeah, G-48.

11 BENNY WAMPLER: Okay. Because we've got a H-48,
12 also.

13 FRED MULLINS: Okay.

14 BENNY WAMPLER: Are you 2A, is that the tract?

15 LESLIE K. ARRINGTON: Yeah...it will be...actually
16 the well site would be 2A and 1A. If you look at my tract
17 identifications for 2A and 1A, both of those tracts say
18 Pocahontas Mining Company for the surface ownership. What
19 tract are you referencing?

20 FRED MULLINS: You're saying---.

21 LESLIE K. ARRINGTON: The well site?

22 FRED MULLINS: Where the well site is, yeah.

23 LESLIE K. ARRINGTON: Okay.

24

1 FRED MULLINS: You're saying you all own it?
2 LESLIE K. ARRINGTON: Well, Pocahontas Mining.
3 FRED MULLINS: And I say I own it.
4 LESLIE K. ARRINGTON: Well---.
5 FRED MULLINS: See, I've paid tax on it since '54.
6 So, I don't know...I figure I own it.
7 LESLIE K. ARRINGTON: Well, I think that must be a
8 property dispute that I heard of yesterday. And, you know,
9 according to our records, Tract 2A...and I understand what
10 you're saying, according to our records, 2A is a Pocahontas
11 Mining surface tract.
12 FRED MULLINS: Well, did you all put it on the
13 record?
14 LESLIE K. ARRINGTON: Did we?
15 FRED MULLINS: Yes.
16 LESLIE K. ARRINGTON: No, sir, we didn't.
17 FRED MULLINS: It wasn't took off of my deed if you
18 put it on record.
19 LESLIE K. ARRINGTON: I think this is a tract that
20 you're speaking to is a...25 acres, Terry?
21 MARK SWARTZ: 23.
22 TERRY: 23.
23 LESLIE K. ARRINGTON: 23 acre tract you're speaking
24

1 to. I believe if you'll look back in the descriptions of
2 that, that tract never made it into your chain of title. You
3 know, we can look back at that. But from our title records,
4 you don't...you do not own Tract 2A from our title records.
5 BENNY WAMPLER: He was asking you earlier, I think,
6 do you own it?
7 LESLIE K. ARRINGTON: No, sir, Pocahontas Mining
8 owns it. We do not. I'm sorry.
9 FRED MULLINS: That's what I mean, Pocahontas.
10 LESLIE K. ARRINGTON: Okay.
11 BENNY WAMPLER: Pocahontas Mining. They're saying
12 Pocahontas Mining owns it.
13 FRED MULLINS: They're saying they own it and I say
14 I own it.
15 LESLIE K. ARRINGTON: Pocahontas Mining.
16 FRED MULLINS: Well, okay, then.
17 LESLIE K. ARRINGTON: Okay.
18 FRED MULLINS: You all need to run it off then,
19 don't you, so we'll know where everything is?
20 MARK SWARTZ: Well, actually, Pocahontas Mining is
21 probably going to commence a declaratory judgment action to
22 resolve this, or at least that's what they're telling us. I
23 mean, you know, we can't plat these lines any better than we
24

1 have unless you want to give us a map.

2 FRED MULLINS: I won't give you anything. You
3 ought to have one. It's a big company.

4 MARK SWARTZ: Well, we have testified, you know, as
5 to what went on here. And my client went up and talked to
6 the people who live on these tracts and got the boundaries
7 from them because without their help we could not have gotten
8 the boundaries. We've got a complaint this morning that
9 surfaced apparently yesterday from a fellow who I gather is
10 now claiming he owns 23 acres when we show him as owning a
11 max of 5 or 6 in two tracts and you just can't get there from
12 here. So, with all due respect, sir, you know, our records
13 indicate that Pocahontas Mining Company owns the tracts where
14 our well is located. We have dealt with the other claimants
15 in all of these units. We have done our best to plat these
16 boundaries and this is our best effort. If you have a map,
17 you know, you need to share it with us and the Board and we
18 will react to that. You know, we don't adjudicate title. If
19 you claim a boundary is somewhere else, you need to draw it
20 on a map and give it to us and we'll react to that. But
21 absent that, you know, this is...this is where we are today.

22 FRED MULLINS: Yeah, I could a draw a map and put
23 it on there. But will that map be any good or not, though?

24

--

1 Are you wanting me to draw one---?

2 MARK SWARTZ: Well, that's the problem.

3 FRED MULLINS: ---or one that's already drawn? I

4 certainly ain't got one drawn.

5 MARK SWARTZ: Well, if you claim the boundaries are

6 somewhere else, it's your job to show us where they are.

7 FRED MULLINS: Well, I can draw you'uns a map. I

8 can't draw it here today. I've got to find out some corners.

9 SANDRA RIGGS: Well, in the context of what we're

10 doing here today, we're not dealing with the permitting of

11 the well, which is what you're talking about.

12 FRED MULLINS: Okay.

13 SANDRA RIGGS: We're dealing with the pooling of

14 the gas rights that would underlie this 80 acre drill unit.

15 FRED MULLINS: Yeah.

16 SANDRA RIGGS: And the unit operator has added all

17 of you as claimants to the gas, and until such time as

18 the...as the dispute is resolved, the monies attributable to

19 those interest will go into an escrow account and be held

20 while you all resolve your property line disputes. The issue

21 that you're addressing is where the well located is a

22 permitting issue really that deals with the gas and oil

23 office of the permitting process and not under the pooling

24

1 process.

2 FRED MULLINS: Okay.

3 SANDRA RIGGS: Does that make sense to you?

4 FRED MULLINS: Yeah.

5 SANDRA RIGGS: I mean, what we're talking---.

6 FRED MULLINS: Okay, we'll go back to the gas then.

7 How is that?

8 SANDRA RIGGS: They've added you as a claimant

9 within these drilling units because of this boundary dispute

10 and because you're claiming evidently, not only that the

11 boundary...that you own surface...more surface than is shown,

12 but as I understand the testimony, you're also claiming you

13 own the gas?

14 FRED MULLINS: No, no. We'll get back to the gas.

15 SANDRA RIGGS: Okay. Well, that's what we're here

16 about today is gas.

17 FRED MULLINS: Okay.

18 SANDRA RIGGS: Claims against the gas ownership.

19 FRED MULLINS: Yeah. But what I want to know is

20 when you bought the gas rights.

21 MARK SWARTZ: We didn't buy the gas.

22 FRED MULLINS: Well, how did you get it then?

23 MARK SWARTZ: We leased it from PMC. They still

24

--

1 own it.

2 FRED MULLINS: And---.

3 BENNY WAMPLER: And who is PMC?

4 MARK SWARTZ: Pocahontas Mining.

5 SANDRA RIGGS: They're here.

6 LESLIE K. ARRINGTON: And they're here.

7 FRED MULLINS: Well, do you know where they got the

8 gas from, who they bought it from?

9 MARK SWARTZ: You bet.

10 FRED MULLINS: Yeah. Well, who did they buy it

11 from?

12 MARK SWARTZ: They got it from Righter.

13 FRED MULLINS: Do you know year that was?

14 MARK SWARTZ: Well, since your title came from

15 Righter, we know it was before you.

16 FRED MULLINS: That's not what I asked you. I

17 asked you what year it was?

18 MARK SWARTZ: Before you.

19 FRED MULLINS: I didn't ask you before me. I asked

20 you what year it was.

21 MARK SWARTZ: I know from reviewing the title that

22 your claim...your deeds came after the Righter deed. So, I

23 don't know what year it is, but---.

24

1 FRED MULLINS: You don't know what year---.

2 MARK SWARTZ: --- I know it was before you since

3 your title came from them.

4 FRED MULLINS: Well, you're going to have to get me

5 a number where it come from to find out something; what year

6 it was sold to Pocahontas Field or whoever.

7 BENNY WAMPLER: Mr. Johnson, do you want to state

8 your name for the record?

9 DONALD R. JOHNSON: Yes, Donald R. Johnson. I

10 represent Pocahontas Mining Limited Liability Company.

11 MARK SWARTZ: Mr. Righter acquired these lands in

12 March of 1906.

13 FRED MULLINS: Okay, that settles it then.

14 MARK SWARTZ: That's what?

15 FRED MULLINS: That's all right then.

16 MARK SWARTZ: Because it was before you got it.

17 FRED MULLINS: Yeah, it was before I got it.

18 MARK SWARTZ: Right.

19 FRED MULLINS: Because I don't think I'm that old.

20 MARK SWARTZ: And then Righter subsequently

21 conveyed some tracts out with reservations. It conveyed the

22 surface and timber for farming. You know, I mean, that's...

23 that's where we are here.

24

1 BENNY WAMPLER: You're saying when he conveyed the
2 gas, that the---?
3 MARK SWARTZ: No, when he---.
4 BENNY WAMPLER: When he conveyed the property, he
5 conveyed it reserving the gas?
6 MARK SWARTZ: One of the deeds says, "all the
7 surface of a tract", that's described at some length, "and
8 timber for farming purposes". And then there was also...in
9 addition to saying it was a surface deed, there was an
10 "expressly reserves from the operation of this conveyance all
11 the coal, minerals, metals and oil, in on" and then there
12 were mining rights with regard to the coal, minerals, metal
13 and oil and so forth. So, we've got a 1906 in to Mr. Righter
14 who was a predecessor and interest of Pocahontas Mining and
15 that's true with regard to all of these tracts that we're
16 talking about today.
17 FRED MULLINS: Did it mention gas in there?
18 MARK SWARTZ: Gas is included in the minerals, in
19 our opinion.
20 FRED MULLINS: In your opinion?
21 MARK SWARTZ: Right.
22 FRED MULLINS: Did it mention it there, though?
23 MARK SWARTZ: No.

24
~

1 FRED MULLINS: It didn't mention no gas?

2 MARK SWARTZ: It said exactly what I've read,
3 "coal, minerals, metals and oil".

4 FRED MULLINS: No gas. Gas wasn't a mineral at
5 that time then, was it?

6 MARK SWARTZ: Well, that's your opinion, sir. You
7 know, there is case law in this state that says that the word
8 mineral includes gas, which is what we're relying on and what
9 Pocahontas Mining is relying on. However, I can't tell you
10 you're right or wrong. So, we're pooling you. You know,
11 you've made a claim, we're pooling you. But I can guarantee,
12 you know, that Mr. Johnson's client is probably going to get
13 into an argument with you about it at some point because they
14 want to resolve this. But, you know, I'm not here to tell
15 you or this Board who owns this gas other than we have done
16 our due diligence to inform ourselves of where we think it
17 is, but, you know, we're not a court. So, you're claiming
18 gas, I hear you and I'm just trying to explain to you why
19 we've done it the way we've done it.

20 BENNY WAMPLER: Do you understand where we are
21 then, Mr. Mullins?

22 FRED MULLINS: No, I still don't understand that
23 they bought the gas rights. I know mineral rights is gas
24

1 now. But it undoubtedly wasn't then because it wasn't in it.
2 It wasn't wrote in there. So, I don't---.

3 SANDRA RIGGS: Well, what...I think what Mr. Swartz
4 is saying is that that interpretation of those deeds would
5 have to be done in court because this Board doesn't have the
6 authority to make those decisions.

7 FRED MULLINS: Yeah.

8 SANDRA RIGGS: And that's really a contest between
9 Mr. Johnson's clients and you as to what your various deeds
10 show---.

11 FRED MULLINS: Yeah.

12 SANDRA RIGGS: ---that needs to get resolved. But
13 in the meantime, everybody has been named in the pooling
14 until that issue gets resolved.

15 FRED MULLINS: See, they ain't but a half a acre
16 there concerning this right here because my deed says I've
17 not got no gas rights. But there's a half acre there that
18 don't say that, one half acre. And the other...the one we
19 ain't got to that yet, have we?

20 SANDRA RIGGS: Uh-huh.

21 BENNY WAMPLER: Which one, H-48?

22 FRED MULLINS: Yeah.

23 DONALD R. JOHNSON: Which one are we on now, if I
24

1 might---?

2 BENNY WAMPLER: G-48.

3 DONALD R. JOHNSON: G-48.

4 BENNY WAMPLER: And when you're saying other, what
5 are you talking about?

6 FRED MULLINS: Well, you see we've got three...
7 three tracts there.

8 BENNY WAMPLER: Yes, sir. That's right.

9 FRED MULLINS: And this was the one that joins my
10 property---.

11 BENNY WAMPLER: Okay.

12 FRED MULLINS: ---where I live.

13 BENNY WAMPLER: Well, now, I've called all three of
14 them. So, you can go ahead and discuss any concern. Just
15 tell us which one you're talking about.

16 FRED MULLINS: Okay, the Lou Emma tract.

17 BENNY WAMPLER: Which one is that, G-49 or H-48?

18 FRED MULLINS: I'd have to look in---.

19 LESLIE K. ARRINGTON: It's H-48.

20 BENNY WAMPLER: H-48. Do you agree with that?

21 FRED MULLINS: It's what?

22 BENNY WAMPLER: H-48.

23 FRED MULLINS: I don't even see it. I've got to
24
--

1 find their names on there and see if it's heirship land.
2 Yeah, okay. Yeah, it's H-48.
3 BENNY WAMPLER: Okay. Go ahead.
4 FRED MULLINS: Okay, what about it, the mineral
5 rights on it, the gas rights...the gas rights?
6 MARK SWARTZ: Okay.
7 (Mr. Swartz reviews his file.)
8 MARK SWARTZ: The half acre tract and the three
9 acre tract came out of two conveyances. One, March 2, 1906
10 that we've already talked about and the other one August 15,
11 1908, which also came out of Pocahontas Mining. That was a
12 deed of the surface of 25.3 acres of land. It said, "There
13 is reserved and excepted from the operation of this
14 conveyance all coal, minerals, metals and oil lying over or
15 under said land", and then there's mining rights associated
16 with that. So, the deeds are...the two deeds are virtually
17 identical for the two tracts. We're showing a half acre
18 tract, by the way, as well.
19 FRED MULLINS: And that there is not telling no gas
20 either, is it?
21 MARK SWARTZ: Well, that's your view of it.
22 FRED MULLINS: And it has not got gas wrote in
23 there?
24

1 MARK SWARTZ: It doesn't have gas wrote in there,
2 but our view is it reserved the gas because it reserved the
3 minerals.

4 FRED MULLINS: Yeah, that's your opinion, though.

5 MARK SWARTZ: Exactly. Exactly.

6 FRED MULLINS: You're a smart aleck, too.

7 MARK SWARTZ: Sir, you're making a claim, we've
8 joined you.

9 FRED MULLINS: You just read what you're saying
10 there.

11 MARK SWARTZ: We have people...we have a lease from
12 people who claim they have had this gas since the turn of the
13 century, okay. They feel very strongly about it. This isn't
14 something I've made up, okay? Pocahontas Mining Company
15 feels just as strongly as you do that they own the coalbed
16 methane. Your argument is with them. My opinion is their
17 claim is better than yours, but I'm not a court. So, my
18 opinion doesn't count for anything other than to say, you
19 know, we've researched the title. We think their claim,
20 Pocahontas Mining, has considerable merit. We've obtained a
21 lease from them. But, you know, I can't tell you that I'm
22 right and make you do, you know...so, we're...we're pooling
23 these folks so that the money gets set aside until they

24

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1 resolve their argument with Pocahontas Mining Company. I
2 mean, that's where we're coming from. Now, you may not like
3 what you're hearing, but, you know, that's the reality. I
4 think they've got a better claim than you do. You don't.

5 FRED MULLINS: Well, yeah, they've got more money
6 than I have. Sure they've got a better claim.

7 MARK SWARTZ: I don't think I said that.

8 FRED MULLINS: I said that.

9 MARK SWARTZ: Okay.

10 FRED MULLINS: Somebody else here might want to say
11 something about Lou Emma's there. I don't know.

12 BENNY WAMPLER: Which tract is that? I never did
13 hear which tract we're talking about.

14 LESLIE K. ARRINGTON: H-48.

15 BENNY WAMPLER: Which unit? Which tract within the
16 unit?

17 SANDRA RIGGS: Which tract within the unit?

18 MARK SWARTZ: We're in H-48 and we're looking at...I
19 think it's 2B.

20 MASON BRENT: It's 2B.

21 LESLIE K. ARRINGTON: 2B.

22 MARK SWARTZ: 2B.

23 BENNY WAMPLER: Mr. Mullins, do you understand
24
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1 that...I want to go back and try to...while they're looking
2 for that, to try to help you understand what we're dealing
3 with here today. We're dealing with pooling of the gas
4 reserves, okay? They're...because you're a surface owner
5 claiming an interest in that gas, you're being pooled. So,
6 all of your interest, if the Board approves these, is being
7 protected until such time as the dispute between ownership is
8 resolved outside of this jurisdiction of this Board.

9 FRED MULLINS: Okay.

10 BENNY WAMPLER: Okay?

11 FRED MULLINS: Okay.

12 BENNY WAMPLER: That's what we're trying to make
13 sure you understand, you and the folks that are here today.

14 FRED MULLINS: Yeah.

15 BENNY WAMPLER: They're pooling. They're coming in
16 and pool...and putting you in a pool, if the Board approves
17 this, and that protects your interest until such time as that
18 dispute of ownership is resolved.

19 MAX LEWIS: And that will have to be done in a
20 court of law.

21 BENNY WAMPLER: Right.

22 MAX LEWIS: You'll have to go to court to prove
23 that.

24

--

1 MASON BRENT: It's 2B, Mr. Chairman.

2 BENNY WAMPLER: 2B?

3 MASON BRENT: 2B.

4 BENNY WAMPLER: Okay, thank you. Do you have

5 anything further, Mr. Mullins?

6 FRED MULLINS: No, I reckon not. Yeah, yeah, on

7 this other here. I want to know when it was bought, too.

8 BENNY WAMPLER: Are you talking about H-48?

9 FRED MULLINS: No. I guess, it's---.

10 BENNY WAMPLER: Or I know it was...G-49.

11 FRED MULLINS: H-48, I guess.

12 BENNY WAMPLER: Well, that's the one we talked

13 about just then.

14 FRED MULLINS: H-48?

15 BENNY WAMPLER: Yes, sir. That's the one we were

16 just talking about. G-49 is the only one we haven't heard

17 from you on.

18 FRED MULLINS: This concerns me, Ella Jean and

19 Hatfield the one this is. Louie Fred Mullins, Larry Mullins,

20 Ella Jean Beavers and Tammy J. Hatfield.

21 BENNY WAMPLER: Look on Exhibit B3 in here. Turn

22 into your document until you get to B3. Turn in several

23 pages there and make sure that the people that you think need

24

1 to be named are named in there. Keep turning in there.

2 SANDRA RIGGS: It would be further on in.

3 BENNY WAMPLER: It's on in past that. You're
4 getting close, though, one more page probably.

5 FRED MULLINS: Okay.

6 (Mr. Mullins reads the document.)

7 FRED MULLINS: I want to know when that was...when
8 that mineral rights were bought.

9 MARK SWARTZ: The same two tracts. The same two
10 deeds. There were two deeds, one for 34.55 acres and the
11 other one for 23 acres. They were...one again was March 2,
12 1906 and there was a deed from Rebecca White, et al to
13 Righter March 2, 1906, recorded Deed Book 32, 18, and that
14 was for 34.55 acres; and then there was from Paul as Special
15 Commissioner, September 28th, 1903, supplemented that. And
16 then there was a deed out that we've already talked about to
17 Mullins of 23 acres March 2, 1906. And a deed out to Mullins
18 of August 15th, that we've already talked about 1908, from
19 PMC to Mullins. The same deeds are essentially involved in
20 these tracts.

21 BENNY WAMPLER: Does it have the same reservations?

22 MARK SWARTZ: Right.

23 FRED MULLINS: Mr. Johnson, did you have anything
24

1 you wanted to say?

2 DONALD R. JOHNSON: I'm going to have a witness I'd
3 like to put on, and, of course, I'd like to say some things.

4 BENNY WAMPLER: Do you have anything further, Mr.
5 Mullins?

6 FRED MULLINS: No.

7 BENNY WAMPLER: Okay. Thank you very much.

8 FRED MULLINS: Some of the rest of them might have.

9 DONALD R. JOHNSON: Is there anybody else? Any of
10 the other land owners?

11 BENNY WAMPLER: Is there anyone else here that
12 wanted to address the Board in these matters?

13 FAY HATFIELD: What he was talking about there---?

14 COURT REPORTER: Ma'am, you need to come down here
15 and you need to state your name.

16 BENNY WAMPLER: She's doing a recording. You need
17 to state your name for the record and come here where we can
18 hear you.

19 (Fay Hatfield comes forward.)

20 FAY HATFIELD: Fay Hatfield.

21 BENNY WAMPLER: Go ahead.

22 FAY HATFIELD: So, what I was...he said this all
23 was in one deed. Is G-49 with it?

24

1 BENNY WAMPLER: I think he mentioned two---.

2 DONALD R. JOHNSON: There's two deeds.

3 BENNY WAMPLER: ---at least two deeds. Two deeds.

4 He mentioned two deeds. He was reading from two different

5 deeds.

6 FAY HATFIELD: Okay. There's three... there was

7 four...four tracts. Find out if he...where did you find out

8 the...who sold this gas to you all from the Mullins or the

9 Whites?

10 MARK SWARTZ: The gas...the original deeds---.

11 FAY HATFIELD: V. W. Mullins.

12 MARK SWARTZ: The original deed from Rebecca White

13 conveyed the 34.55 acres to Righter on March 2, 1906. So,

14 the gas...the coal, minerals, metals and oil would have come

15 into Righter in that deed.

16 DONALD R. JOHNSON: Did Righter acquire this as

17 fee? Mr. Swartz, I think you're being confusing about this.

18 Is that a fee conveyance or is that a conveyance of

19 minerals?

20 MARK SWARTZ: This is a mineral title. So, I

21 don't...you know, they weren't really paying attention to the

22 surface at that point. But I've got a March 2, 1906 deed in

23 deed book 32, page 18 where Rebecca White conveyed unto

24

1 Righter a property that was described as what I'm reading to
2 you all. Now, I'm assuming that it was...that it may have
3 been fee because there's a subsequent deed out from Righter
4 of surface, okay. But I don't...the paper I have in front of
5 me, I can't tell. Then there was another deed into Mr.
6 Righter from a Trustee, Paul Royal, dated September 28, 1903,
7 which again just looking at what the title opinion quotes,
8 all I'm seeing is minerals. But it might have been a fee
9 deed. Those are...that's the principal deed that I think
10 that you're concerned with.

11 FAY HATFIELD: I think right there you was talking
12 about the heirs, Lou Emma Mullins's heirs, 5 acres and
13 something.

14 MARK SWARTZ: Well, there was...Mr. Righter
15 conveyed out...you know, there was a deed from...on March 2,
16 1906 from V. W. Mullins and Lou Emma Mullins to Thomas
17 Righter as well of their minerals. So, by 1906, Mr. Righter
18 had three deeds from Rebecca White, V. W. and Lou Emma
19 Mullins and from a Special Commissioner, Paul Royal, with
20 regard to these tracts all conveying the fee minerals as best
21 as I can tell from the title I've got. Then what happened
22 later was that Mr. Righter and his successor PMC conveyed the
23 surface out, you know, which accounts for all the tracts that
24

1 we're seeing; and they're a bunch of them. I mean, you know,
2 the surface title that we've got, we're showing a 3 acre
3 tract in the Louie Fred Mullins, a 3.5 acre tract in the
4 Louie Fred Mullins, which is 3 acres and a ½ an acre, a 1
5 acre surface tract in the Larry Irvin Mullins, a 3.5 acre
6 surface Tammy J. Woosley Hatfield and 3 acres Ellen Jean
7 Beavers, you know, that are plated, that came out of...came
8 out of PMC title.

9 FAY HATFIELD: So, all of that was in the one...or
10 two deeds, all of these tracts?

11 MARK SWARTZ: Correct. Two deeds in the Pocahontas
12 Mining---.

13 FAY HATFIELD: Yeah.

14 MARK SWARTZ: ---or at least their predecessor.
15 Right. There was a 23 acre tract and a 34 acre tract that
16 came into that.

17 FAY HATFIELD: Okay.

18 BENNY WAMPLER: Any other questions that any of you
19 folks have?

20 (No audible response.)

21 BENNY WAMPLER: Go ahead, Mr. Johnson.

22 DONALD R. JOHNSON: I'd like to call Pamela West.

23 (Pamela West is duly sworn.)

24

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1

2

PAMELA G. WEST

3 having been duly sworn, was examined and testified as
4 follows:

5

DIRECT EXAMINATION

6 QUESTIONS BY MR. JOHNSON:

7

Q. Ms. West, I want to ask you, does...first
8 state for the record your name and who you work for and what
9 your position is with the company.

10

A. Pamela G. West. I work for Pocahontas
11 Mining, L.L.C. and I'm Vice President of that company.

12

Q. And with regard to the pooling applications
13 that are now pending before the Board, what is the position
14 of Pocahontas Mining Company respecting the validity of those
15 pooling applications?

16

A. We are against pooling this application.

17

Q. And why is that?

18

A. Because we own all the mineral.

19

Q. And, I think, there was some discussion that
20 Mr. Swartz brought up about the deeds that would have gone to
21 the Mullins with respect to the title that has been given to
22 us by Pocahontas Gas Partnership, is that correct?

23

A. Yes.

24

--

1 Q. There's a couple of deeds. Have you found
2 those deeds in the records of your company?

3 A. Yes, I have.

4 Q. And the deeds...the deed from Thomas Righter
5 to V. W. Mullins dated March...March 2, 1906, would you tell
6 the Board who Thomas M. Righter was?

7 A. He was the founder of this company, of
8 Pocahontas Mining Corporation.

9 Q. And the deed to the Mullins...to Mr. V. W.
10 Mullins in 1906, what did it convey to Mr. Mullins?

11 A. Oh, it conveyed no mineral; just the
12 surface. And it conveyed...I don't know what the acreage
13 was.

14 (Ms. West reviews the deed.)

15 Q. 23 acres.

16 A. Yeah, 23 acres.

17 Q. And as far as the language with respect to
18 what was conveyed, what did it convey?

19 A. Just the surface.

20 Q. The words "all of the surface"?

21 A. All of the surface.

22 Q. And then did that deed further reserve
23 anything in it?

24

1 A. All mineral.

2 Q. And what's the language in the deed about
3 the reservation of mineral?

4 A. It says, "all coal, minerals, metals and
5 oil, in on, and underlying the foregoing description
6 described tract of parcel of land, together with all
7 necessary and convenient mining privileges of ways with
8 accessible and economical mining, operations and marketing of
9 the interests in the said lands herein reserved and
10 excepted."

11 Q. And there are other mining rights contained
12 in that deed?

13 A. Yes. Yes.

14 Q. Okay. With respect to the deed that Mr.
15 Swartz referred to as the 1908 deed from Pocahontas Mining
16 Corporation, what's the relationship of Pocahontas Mining
17 Corporation to Pocahontas Mining Limited Liability Company?

18 A. That's where we originated from was
19 (inaudible) subsidiary.

20 Q. All right. And did Pocahontas Mining
21 Limited Liability Company then become the owner of the lands
22 that were formerly owned by Pocahontas Mining Corporation?

23 A. Yes, they did.

24
~

1 Q. And this other deed to V. W. Mullins, it
2 conveyed....?
3 A. 25.3 acres.
4 Q. And what's the language with respect to what
5 was conveyed?
6 A. Surface.
7 Q. And does it have the same language---?
8 A. Same language.
9 Q. ---with respect to minerals and the use of
10 minerals,---?
11 A. Yes.
12 Q. ---mining rights and so forth? And what
13 has...what has Pocahontas Mining Limited Liability Company
14 done with respect to leasing of its coalbed methane?
15 A. We have leased that to Consol or Pocahontas
16 Gas Partnership.
17 Q. It has been leased to Pocahontas Gas
18 Partnership. And what does...what does PMC claim as far as
19 its title underlying this surface? What does PMC claim that
20 it owns?
21 A. We own all the mineral.
22 Q. And that includes what?
23 A. Coalbed methane.

24

--

1 Q. Does it also include coal and gas?

2 A. Yes.

3 Q. Has coal and gas been developed on this

4 property?

5 A. Yes.

6 DONALD R. JOHNSON: Any questions anybody else has?

7 BENNY WAMPLER: Any questions from members of the

8 Board?

9 (No audible response.)

10 BENNY WAMPLER: Do you have anything, Mr. Swartz?

11 MARK SWARTZ: No.

12 BENNY WAMPLER: Do you have anything further?

13 DONALD R. JOHNSON: No, I'd like to make a

14 statement at the end of this. Other than that, no, sir.

15 BENNY WAMPLER: You may go ahead and do that.

16 Thank you, Ms. West.

17 DONALD R. JOHNSON: If I may, with speaking to this

18 Board, this is a situation that I think is very unfortunate.

19 And why do I think it's unfortunate, well, a lot of people

20 have come in here and said my client...I believe this is a

21 very unfortunate situation for my client. The mineral...the

22 surface claimants in this matter come in with deeds to their

23 predecessors that only convey surface. It doesn't convey

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1 anything else, just surface. We had pretty smart
2 predecessors. Not only did they just convey surface, and
3 using that word specifically in the deed, but they also
4 reserved all the coal, mineral, oil and so forth. Then they
5 proceeded in that deed to put extensive mining rights. So,
6 the deed not only just conveyed surface, but it also conveyed
7 all the rights with respect to the development of the
8 underlying mineral state.

9 I can't think of a situation for the surface owners
10 that would be more plain than this one. It's a fee owner of
11 land who conveys some to a party, only surface. Then says
12 not only do I just convey you the surface, I reserve
13 everything I can think of humanly possible underlying that
14 land.

15 Mr. Swartz has mentioned a court case in the
16 Commonwealth and there's only one. That court case says if
17 the word mineral is used, it also includes oil and gas.

18

19 There has been absolutely no legal precedent which
20 supports the ownership or claim by surface owners. Yes, the
21 statute says if there are conflicting claimants. What
22 Pocahontas Mining says is that those conflicting claimants
23 must have at least some, some hope, some grasp, some thread,

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1 something, in order to be able to come before this Board and
2 tie up royalty money forever unless and until we "go to
3 court". This statute has been in effect...and I think it's
4 unfortunate, this statute has been in effect for eleven...no,
5 almost twelve years. You know, I've made a lot of speeches
6 about who wrote the statute, and I think you all know that.
7 But I...with respect to...and I know everybody is going to
8 say it was the legislature, but with respect to this
9 particular provision, yes, it was intended...it was intended
10 to resolve the claims of competing oil and gas and coal
11 interest, not for someone to come in and tie up royalty money
12 for unknown periods of time based solely on a claim of
13 surface. A deed that conveys only surface. A deed that
14 reserves minerals. And I think...you know, we don't...
15 Pocahontas Mining doesn't believe its coalbed methane lessee
16 should have come before this Board and pooled this acreage.
17 We don't believe the acreage should be pooled because they
18 own a 100%. They own a 100%. They have leased the coal
19 through one of their members or one of their partners. They
20 have leased the oil and gas through one of their partners
21 and...or no, they have leased the oil and gas and they have
22 got a specific lease of the coalbed methane. We relied upon
23 them to develop the coalbed methane for us. If someone

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1 writes a letter and says I'm a surface owner and I have a
2 claim and that's all it takes to tie up our money, not
3 theirs, then I think we've been...I think that the State and
4 this Board have done mineral owners a disservice. I wish all
5 these surface owners could have big chunks of royalty, you
6 know. I'm sure all of them want it. But when they come in
7 with the barest, the most...the weakest claim that I can
8 imagine with a deed of conveying mere surface, and it says
9 that, I cannot find any...any real legal meaning to
10 conflicting claim out of that.

11 That's pretty much all I have to say. I ask the
12 Board on behalf of my client to dismiss the pooling and if it
13 dismisses...and if it doesn't dismiss the pooling, then I ask
14 the Board to eliminate these surface owners as conflicting
15 claims.

16 BENNY WAMPLER: Thank you, Mr. Johnson.

17 DONALD R. JOHNSON: Thank you.

18 BENNY WAMPLER: Mr. Swartz, do you have anything
19 further?

20 MARK SWARTZ: No.

21 DONALD R. JOHNSON: And I have copies of those
22 deeds if you all would like to have them. I probably should
23 make them part of the record, a copy of the two deeds that
24

1 Mr. Swartz referred to.

2 BENNY WAMPLER: Any questions from members of the
3 Board of Mr. Johnson?

4 (No audible response.)

5 BENNY WAMPLER: Thank you, Mr. Johnson.

6 DONALD R. JOHNSON: Thank you very much, Mr.
7 Wampler. Thank you. I'll just have these marked as PMC
8 exhibits and made part of the record. Thanks.

9 (Board members confer among themselves.)

10 BENNY WAMPLER: Well, I think the Board pretty well
11 understands this case we have before us. We have a request
12 to pool and we have a request to deny the pooling based upon
13 the testimony we've heard here today. I don't know if we
14 have any legal advice on---.

15 SANDRA RIGGS: Well, as I heard the legal issue as
16 presented by the surface owners, they're claiming ownership
17 of gas by virtue of an argument that in 1906 or 1908 the
18 reservation contained within the deeds did not specifically
19 include the word gas; and they're saying that minerals in
20 1906 did not include gas. Maybe that argument was made
21 before you came, Don. I'm not real sure. But that is what I
22 think I heard them saying is that in 1906 when there was a
23 reservation of minerals, that did not include...there was no

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1 specific reservation of gas; and in their legal opinion, I
2 guess, or their legal argument is that a reservation of
3 minerals did not include the gas. I don't know that we had
4 the court case here what the underlying deed then was.

5 DONALD R. JOHNSON: I'll be glad to furnish. I'm
6 trying to think---.

7 SANDRA RIGGS: I don't know what the date of that
8 deed was.

9 DONALD R. JOHNSON: It's a---.

10 SANDRA RIGGS: You know, I don't know that it
11 matters for our purposes because I don't think the Board has
12 jurisdiction to adjudicate these title issues anyway.

13 (Mr. Wilson hands the Board a copy of case.)

14 BENNY WAMPLER: Is that what this is?

15 (No audible response.)

16 DONALD R. JOHNSON: Which one do you got? I'm
17 trying to think of---.

18 BOB WILSON: It's Mac.

19 DONALD R. JOHNSON: Hum?

20 SANDRA RIGGS: This is...this is the Mac
21 Construction case that talks about the rule of capture. Does
22 it cite to the...I don't think this is the case they're
23 referring to.

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1 MARK SWARTZ: No.

2 DONALD R. JOHNSON: No. I should have it on the
3 top of my head here, but I don't.

4 MARK SWARTZ: There's an old...I think it's Red
5 Ash.

6 DONALD R. JOHNSON: It's a 1930's case. Yeah, it's
7 a 1930's case. It says minerals includes oil and gas. I
8 think the other thing that I tried to emphasize here is that
9 the fee owner of the land conveyed the surface, conveyed the
10 surface. Didn't convey...didn't say I convey you this land
11 and I reserve this. It said I convey you the surface and I
12 reserve this. I can't think of anything stronger in favor of
13 the mineral owner than an outright conveyance of surface only
14 with a reservation to back it up and extensive mining rights.
15 If they hadn't have put the mining rights, I guess you would
16 have a problem with the development of those minerals, but
17 they only conveyed the surface.

18 (Board members confer among themselves.)

19 BENNY WAMPLER: Let's take a ten minute recess and
20 let Ms. Riggs have a chance to look at whatever Mr. Wilson
21 provided her and then we'll come back and discuss these,
22 okay.

23 (Break.)

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1 BENNY WAMPLER: Okay, we'll go ahead and call the
2 meeting to order.

3 (Mr. Wampler confers with Ms. Riggs.)

4 BENNY WAMPLER: We're giving Mr. Mullins time to
5 read this. I didn't know---.

6 SANDRA RIGGS: The Warren case.

7 BENNY WAMPLER: So, we're back off the record.
8 (Off record.)

9 BENNY WAMPLER: Okay, we'll go back on the record
10 and call to order. I'll ask the Board one more time, is
11 there any questions, or anything we want to ask at this
12 point?

13 MASON BRENT: I'd like to ask at least one
14 question. First of all, I'd like to ask about that case that
15 you just read. When was that case?

16 SANDRA RIGGS: The case was decided in 1936 and it
17 was a construing a deed dated 1887.

18 MASON BRENT: Okay. All right. And, Mr. Johnson,
19 are you aware of any active cases in the court system to try
20 and determine where coalbed methane falls out in all of this?

21 DONALD R. JOHNSON: There...as far as Virginia, the
22 only...I am aware of a case which has been pending for many,
23 many years. It still hasn't been decided. It's...it's in
24

1 the Circuit Court of Buchanan County. The Judge has had it
2 for over three years. That case had many issues. It was a
3 side issue to that. I don't know of any other cases.

4 As this Board may be aware, there was a statute put
5 in effect in about 1978, which said that all...which said
6 that there was a presumption that all migrating gases were
7 presumed to be...belonged to the surface owner. That
8 case...that case was later repealed. There's another case I
9 was involved in which that was an issue. But that statute
10 has been repealed.

11 There are no cases and they are...well, I
12 guess...there are no cases in Virginia that I am aware of
13 that decides who owns coalbed methane. There are no cases in
14 Virginia that support the idea that surface owners own
15 coalbed methane.

16 Without trying to be argumentative, again, I think
17 that the most important factor here is that the deed itself
18 conveyed only surface and it was a fee owner conveying only
19 surface and reserving minerals with mineral rights. That
20 makes it...that makes, I think, this case as profoundly
21 favorable to our position as any I can think of.

22 SANDRA RIGGS: This case was a Supreme Court of
23 Virginia case. The holding states...or the issue was, are

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1 petroleum oil and gas minerals? And they state, "In our
2 opinion, the answer must be in the affirmative unless a
3 contrary meaning or less comprehensive meaning is shown."

4 BENNY WAMPLER: Any other questions?

5 (No audible response.)

6 BENNY WAMPLER: Is there a motion?

7 KEN MITCHELL: Mr. Chairman, I make a motion to
8 delete the pooling, and I'd like to do it one item
9 specifically and that's unit G-48. And if I get a second, I
10 would like to speak on it.

11 MAX LEWIS: I second it to your motion.

12 KEN MITCHELL: Okay, thank you, sir.

13 BENNY WAMPLER: It was seconded.

14 KEN MITCHELL: This...this Board is set up to help
15 pooling efforts or something along this line. I've...I knew
16 when I came on this Board that there were no easy decisions.
17 I've also sat on my county board for eight years. There are
18 no easy decisions.

19 These items that are presented to us, we either
20 have to approve them or disapprove them. We are not a court
21 of law. There's no attorneys sitting here except the
22 respected lady to my right and she is with the Attorney
23 General's office. All of us are just local citizens who have
24

1 an interest in serving and being a part of the community.
2 But when I see the issue presented to me today, if there
3 is...if there is a question, if there is a problem, that
4 interest then maybe should go to a legal court of law to be
5 fought out there. We're not here to fight out a issue. I'm
6 not here today to argue surface rights, under surface rights
7 or whatever. That's not my motion.

8 My motion is under this scenario of a 100% being
9 presented in all cases, this is the first one I've ever seen
10 with a 100% on all four items. So, my motion specifically
11 states that we delete...I'd like to start with G-48 as a
12 separate unit and we'll go from that point.

13 (Ms. Riggs confers with Mr. Mitchell).

14 KEN MITCHELL: Right. To...okay, to make it more
15 specific, to deny the application for pooling.

16 BENNY WAMPLER: He amended his motion. Do you
17 second that to deny the application?

18 MAX LEWIS: No, I won't second it.

19 BENNY WAMPLER: Is there a second on denial of the
20 application?

21 KEN MITCHELL: Now, which one is this---?

22 SANDRA RIGGS: G-48.

23 BENNY WAMPLER: G-48. You amended your motion.

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1 KEN MITCHELL: Well, okay, okay.

2 BENNY WAMPLER: And I was just verifying that the
3 second---.

4 KEN MITCHELL: Oh, good, good, okay.

5 BENNY WAMPLER: ---and he said no.

6 SANDRA RIGGS: He's withdrawing his second.

7 KEN MITCHELL: He what?

8 BENNY WAMPLER: He withdrew his second.

9 SANDRA RIGGS: He withdrew his second.

10 KEN MITCHELL: Okay.

11 BENNY WAMPLER: Is there a second for denying the
12 application?

13 (No audible response.)

14 BENNY WAMPLER: Hearing none, the motion fails. Is
15 there a substitute motion or another motion?

16 MASON BRENT: Mr. Chairman, I'm just a little
17 uneasy, you know, with this. This is a tough decision. I'm
18 struggling in my mind when I hear Mr. Johnson basically tell
19 us that this is a no brainer, and I'm inclined to agree that
20 it seems to be a no brainer. Where I struggle is I don't see
21 myself in the seat to make that determination as to whether
22 it's a no brainer or not.

23 Therefore, I cannot agree with your position, nor
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1 can I disagree with your position. Which puts me right back
2 to where I've been for the last four and a half years sitting
3 on this Board. So, it's really tough for me to come up with
4 a motion to dismiss this application.

5 So, Mr. Chairman, that having been said, on this
6 specific issue, G-48 I believe we're working one, I move that
7 we grant the pooling application as submitted.

8 BENNY WAMPLER: Is there a second to granting the
9 pooling application?

10 (No audible response.)

11 BENNY WAMPLER: Hearing no second, that motion
12 fails. Is there another motion? Is there a middle ground?

13 MASON BRENT: Mr. Chairman, I'll struggle again.

14 BENNY WAMPLER: Okay. Mr. Brent?

15 MASON BRENT: I would move that we continue G-48
16 until next month.

17 BENNY WAMPLER: I have a motion to continue G-48
18 until next month. Is there a second?

19 (No audible response.)

20 BENNY WAMPLER: I knew I shouldn't have given a
21 break.

22 (Laugh.)

23 BENNY WAMPLER: The motion fails.

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1 MASON BRENT: Mr. Chairman, I've run out of ideas.
2 BENNY WAMPLER: I understand. I think the Board
3 struggles with this.
4 KEN MITCHELL: Mr. Chairman, I would go back to my
5 original motion.
6 MAX LEWIS: State your original motion.
7 BENNY WAMPLER: He has asked for you to restate
8 your original motion.
9 KEN MITCHELL: Okay. My original motion is to deny
10 the force pooling on G-48.
11 MAX LEWIS: I second it.
12 BENNY WAMPLER: Motion and second. Any further
13 discussion?
14 (No audible response.)
15 BENNY WAMPLER: All in favor, signify by saying
16 yes.
17 (Ken Mitchell and Max Lewis say yes.)
18 BENNY WAMPLER: Opposed, say no.
19 (Mason Brent says no.)
20 BENNY WAMPLER: The Chair says no. So, we've got a
21 deadlock. That's where we are.
22 KEN MITCHELL: Two to two.
23 BENNY WAMPLER: And I think what we're struggling
24

1 with, obviously, is with the statute and the way the statute
2 is worded and that we're to, and I'm not trying to prejudice
3 anybody here by saying this, obviously this is on record, but
4 what we're doing is we're moving into an arena we haven't
5 ventured into as a Board and that is deciding property
6 ownership.

7 We've had cases and everything presented to us
8 before and we've always decided not to decide that; that that
9 goes beyond us; that what we're here for is to make sure all
10 parties are included in pooling and those kinds of matters
11 that follow the law. I think that's where...I'm not trying
12 to speak for Mr. Brent, but that's where I think both us are
13 struggling here a little bit that this is walking into an
14 arena we haven't ventured into before.

15 MASON BRENT: I concur.

16 MARK SWARTZ: From our standpoint...I don't know if
17 I can speak.

18 BENNY WAMPLER: Go ahead.

19 MARK SWARTZ: I don't care what you do because we
20 felt like we had an obligation to step up to the plate and
21 give you an opportunity to do something. So if you punt,
22 everybody had their day in front of this Board; and if they
23 want to go to Court in the future, they can. I mean, we've
24

1 drilled the wells. We'll go forward. So, just so you
2 understand that from our perspective, you know, we felt like
3 we had to do...we had to file these because of the history
4 that we've experienced. But, you know, if you guys are
5 deadlocked and you can't do anything, you know, it's not like
6 you're going to block development here. It's just these
7 people are going to get to court in a different way. They're
8 not going to be appealing your decision. They're going to be
9 doing something else perhaps. But I just thought I needed to
10 share with you where it would leave us because I think
11 that's...that's where we are.

12 DONALD R. JOHNSON: You know, I...if I may say
13 something. I...I attempted on behalf of some surface owners
14 back in the early '90s to get the Board to recognize them;
15 and because of the oil and gas operator did not, those people
16 were thrown out in the street. I'm talking about, you know,
17 at least somebody...at least I felt like, and I know Mr.
18 Swartz and I have argued about who's the smartest and stuff,
19 but I thought I was pretty smart back then. Mr. Swartz
20 didn't represent the operator. I thought I knew what I was
21 doing and I was trying to get these people in the door and
22 because the operator did not list those surface owners as
23 conflicting claimants, I was treated...my clients were thrown
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1 out on the street by this Board for that reason.

2 I think it's really coming down to whether or not
3 these claims had any legitimate...I mean, that's...that's my
4 perspective. If they're not...if they have no hope...if they
5 have no hope in front of the courts and all it does is block
6 a mineral owner who has a 100% fee title to the minerals from
7 receiving royalties from coalbed methane development, and I
8 think...I think that's where...that's where the line is.
9 Like I said, I know Mr. Brent said something about, you know,
10 I felt like it was a no brainer. It is a no brainer for
11 several reasons that I've already outlined in addition to the
12 court interpretation regarding minerals. I don't think
13 that's even important. Because if you only convey somebody
14 surface, what else can they possibly own. Only what's...what
15 is affiliated with the surface.

16 I've said enough. But I'm also expressing some
17 frustration from many days gone by. But I'll be glad
18 to...many days.

19 MARK SWARTZ: You need to get over it.

20 DONALD R. JOHNSON: I will get over...I will never
21 get over that because I really was frustrated by the way the
22 Board treated my clients simply because the oil and gas
23 operator refused to recognize them. They were thrown out on

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1 the street, and I'm talking about filing pleadings, motions
2 and et cetera. I'll be glad to furnish copies of all of that
3 to any of you that would like to see it.

4 But I've already made my run at this Board for
5 surface owners and I was told to go home and be happy about
6 it. I had one client to pay me \$5 a month until his bill was
7 paid. That took several years. I hope Ms. West didn't hear
8 that.

9 PAMELA WEST: It's a good plan, though.

10 (Laugh.)

11 BENNY WAMPLER: Okay. We need to make a decision.
12 We've gone around and around the bush here. We can't not
13 make a decision.

14 MASON BRENT: Well, you know, I would...I would
15 resurrect my motion that we continue this for the reason that
16 here we are with, unfortunately, an even number of Board
17 members here. Maybe next month we will have more members
18 present and can give this more consideration with more eyes
19 and ears and see if we can't resolve the issue then.

20 BENNY WAMPLER: Is there a second for a
21 continuation? I mean, I'd kind of like to go ahead and
22 decide it, I think, today. I think we've got all the
23 information before us unless we...unless we---.

24

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1 MAX LEWIS: I make a motion we continue it.

2 BENNY WAMPLER: Well, then that's a second then.

3 We've got a motion and a second to continue it. Any further

4 discussion?

5 (No audible response.)

6 BENNY WAMPLER: All in favor, signify by saying

7 yes.

8 (Max Lewis and Mason Brent says yes.)

9 BENNY WAMPLER: Opposed, say no.

10 (Ken Mitchell says no.)

11 BENNY WAMPLER: We'll continue it to next month.

12 I'd like to get the transcript prior to the hearing and

13 mailed to the Board members, all the Board members, so we can

14 not have to rehash, but just simply consider the record.

15 DONALD R. JOHNSON: Is that motion as to all three

16 units? Is that what was intended?

17 BENNY WAMPLER: I'll ask the person that made it.

18 Is that for all three units that we heard today?

19 MASON BRENT: I made the motion. That would be for

20 all three units.

21 MAX LEWIS: Yeah.

22 BENNY WAMPLER: Second. Yes. Do you have anything

23 further, Mr. Wilson, today?

24

1 BOB WILSON: I have one item of business for the
2 Board. Yeah, we have been discussing the upcoming audit of
3 the escrow account and had approved proceeding with setting
4 up of bids and such.

5 Our office of General Services, which is our
6 internal group that handles procurement and contracts and the
7 like, has determined that if we can do this for less than
8 \$5,000 per year, then we do not have to go out for bid. They
9 have also discussed this proposal with the company who did
10 our last two audits and they have guaranteed that this
11 upcoming two year audit, which will be the years 2000 and
12 2001, would not exceed that \$5,000 cost.

13 It has been suggested and I will pass it along to
14 you that we consider going with these folks. There are
15 advantages to that. They, of course, have the experience.
16 They know the system. Secondly, just for the information
17 here, the last two bids that we've put out, this is the only
18 company that has responded. They're apparently one of the
19 few companies on this end of the State that's qualified to do
20 government audits who will take what is a relatively small
21 job which this is.

22 So, the suggestion would be...or for your
23 consideration would be, do we wish to go ahead with this
24

1 group in which case we can go ahead and prepare contracts and
2 get under way, or should we go back to the bid process?

3 MAX LEWIS: Would it be legal to do that---?

4 BOB WILSON: Yes.

5 SANDRA RIGGS: Uh-huh.

6 MAX LEWIS: ---if you might get a bid lower than
7 \$5,0000?

8 BOB WILSON: Our...according to our Office of
9 General Services, up to \$5,000 can be done on quote. So, it
10 is...it's obviously a perfectly legal process.

11 KEN MITCHELL: So what I understand, Bob, from your
12 statement is that the two year quote would be under \$5,000?

13 BOB WILSON: Correct.

14 KEN MITCHELL: Okay. Okay, I would...I would make
15 a statement that we should go ahead with that.

16 MAX LEWIS: A motion?

17 KEN MITCHELL: I make it as a formal motion.

18 BENNY WAMPLER: Okay.

19 MAX LEWIS: I second it.

20 BENNY WAMPLER: The motion is second. Any further
21 discussion?

22 MASON BRENT: And you think...you think the staff
23 is in favor of this?

24

